

EDITORIAL

SEXUAL VIOLENCE IN ARMED CONFLICT: FROM BREAKING THE SILENCE TO BREAKING THE CYCLE*

Sexual violence has been, and to a large extent continues to be, shrouded in silence. However, the dynamics behind it, including its prevalence and horrific toll on individuals and societies, have been progressively better understood over the last two decades. The conflicts in the former Yugoslavia and the Rwandan genocide in particular lifted the veil and brought to the fore the suffering of women, men, boys and girls, as well as their families and whole communities, as a result of sexual violence.

The increasing public awareness and denunciation of the horrors of sexual violence in armed conflict have been accompanied by significant progress in a number of areas. A growing understanding of the consequences of sexual violence has led to multiple initiatives from various humanitarian organizations, United Nations (UN) agencies, civil society actors, governments, militaries and academics. The development of the Statute of the International Criminal Court (ICC) was seen by many, including large numbers of civil society organizations, as a long-awaited opportunity to create clarity on this topic. Strong jurisprudence on the prohibition and criminalization of acts of sexual violence during armed conflict has also been developed by domestic, regional and international courts. The *ad hoc* international criminal tribunals, in particular, have documented horrendous episodes of suffering and have held individuals responsible for these acts. From a humanitarian perspective, initiatives have included enhancing and improving assistance and protection activities in this area. Additionally, the focus has shifted from the particular plight of women in conflicts to a broader approach, based on the vulnerabilities experienced by both men and women on the basis of their gender and their sex.

Nonetheless, sexual violence continues to be committed in the twenty-first century's conflicts. While it remains extremely difficult to quantify due to its still rather "invisible" nature, available estimates indicate that acts of sexual violence are perpetrated on a large scale in various regions of the world today.¹ Studies have demonstrated that all types of actors in conflict, be they State armed forces,

* Vincent Bernard is Editor-in-Chief of the *International Review of the Red Cross*. Helen Durham is Director of the International Law and Policy department of the International Committee of the Red Cross (ICRC) and has published extensively on issues related to women in international law. The authors would like to thank Elvina Pothelet, Editorial Assistant for the *Review*, for her contribution to this thematic issue.

non-State armed groups and/or multinational forces, have committed sexual violence.²

Today, although we know more about the causes of conflict-related sexual violence, its magnitude and human cost, this knowledge has yet to be translated into effective prevention and response activities.

With this issue, the *Review* intends to contribute to the discussion on how to further improve access to and quality of services to victims, while also crafting effective prevention strategies. Following the *Review's* editorial line, this issue is multidisciplinary. In that respect, it echoes the idea that the fight against sexual violence in armed conflict requires a cross-disciplinary effort, bringing together expertise from areas such as health, political science, gender studies, history, law and military ethics.

But before giving the floor to experts, the *Review* opens this issue with the voices of persons who have survived sexual violence. They have agreed to share how they worked to overcome the multiple ensuing challenges in their lives.³ The *Review* expresses its deepest gratitude to them and hopes that others may find support and guidance from these voices in their own path to recovery.

A multidimensional trauma requiring a comprehensive response

Sexual violence can be broadly defined as acts of a sexual nature imposed by force, threat of force or coercion, or by taking advantage of a coercive environment or a person's incapacity to give genuine consent.⁴ It encompasses acts such as rape, sexual slavery, enforced prostitution, forced pregnancy and enforced sterilization. Sexual violence occurring in an armed conflict can be committed for strategic purposes, opportunistically, or because it is tacitly tolerated.

1 As reflected in the Médecins Sans Frontières data shared by Françoise Duroch and Catrin Schulte-Hillen in this issue of the *Review*. See also the Sexual Violence in Armed Conflict Dataset elaborated by the Harvard Kennedy School and PRIO, available at: www.sexualviolencedata.org/dataset/. For a description of the dataset and some findings, see Dara Kay Cohen and Ranghild Nordas, "Sexual Violence in Armed Conflict: Introducing the SVAC Dataset, 1989–2009", *Journal of Peace Research*, Vol. 51, No. 3, 2014, pp. 418–428. United Nations (UN) Secretary-General Ban Ki-moon has also noted recently that the year 2014 was marked by harrowing accounts of rape, sexual slavery and forced marriage in contexts like Syria, Nigeria and the Central African Republic. See Report of the Secretary-General, *Conflict-Related Sexual Violence*, 23 March 2015, UN Doc. S/2015/203, available at: www.un.org/en/ga/search/view_doc.asp?symbol=S/2015/203.

2 For an overview, see the piece by Elizabeth Jean Wood in this issue of the *Review*.

3 Thanks to the support of ICRC field delegations, a series of interviews with beneficiaries from humanitarian programmes has been conducted in Colombia and the Democratic Republic of the Congo especially for this issue. See the "Voices and Perspectives" section of this issue, "After Sexual Violence: Paths to Recovery".

4 The ICRC has recently produced a fact sheet summarizing the definition of sexual violence in international law. See ICRC Advisory Service on IHL, "Prevention and Criminal Repression of Rape and Other Forms of Sexual Violence during Armed Conflicts", available at: www.icrc.org/en/document/prevention-and-criminal-repression-rape-and-other-forms-sexual-violence-during-armed.

The human cost

The human cost of sexual violence has different dimensions, as is strikingly apparent from the testimonies of victims gathered by the *Review*. The consequences can include severe and long-term effects not only on an individual's physical health (including the risk of contracting sexually transmitted diseases or developing unwanted pregnancies), but also on their mental health. The social consequences may also be dramatic, forcing victims into isolation due to the shame and stigma which are too often associated with such violence, but also due to the fear of rejection or reprisals. With all familial and social links broken, some victims are left with no means of subsistence: most of the testimonies indicate that one of the most urgent and important challenges that victims faced after the attack was economic survival for themselves and their family.

Sexual violence has long remained insufficiently addressed by humanitarian responders, often in view of their lack of expertise or their limited capacities when also faced with people's immediate "visible" needs for food, water and/or shelter. Humanitarian organizations were possibly reluctant to engage on this issue because of its highly sensitive nature and the risk of being perceived as interfering with local customs or religious beliefs.

Generally, over time an improved understanding of the consequences of sexual violence for victims has resulted in an enhanced ability to respond to their needs. In this issue, Françoise Duroch and Catrin Schulte-Hillen share insightful reflections on how Médecins Sans Frontières has progressively integrated health care for victims of sexual violence into its general assistance to populations affected by armed conflicts.

Raed Abu Rabi's essay describes the particular needs of victims of sexual violence in detention, and the corresponding support that the International Committee of the Red Cross (ICRC) seeks to provide. Male victims of sexual violence may also have specific needs. In this respect, Chris Dolan points out that the growing recognition of men as victims of sexual violence has yet to be adequately reflected in policy and practice in the humanitarian world.

Building a comprehensive response

A major finding from most studies on sexual violence is that it varies drastically in nature and severity across contexts. These variations, as well as the victim's own situation, will determine the nature and amount of support each person will need. If victims of sexual violence are to be effectively assisted and supported, it is essential to take into account their multiple needs and provide a response that respects their autonomy and dignity, as explained by Paul Bouvier in this issue. Such a response may include the delivery of medical, mental and psychosocial assistance, together with awareness-raising sessions with local communities, economic support to the most vulnerable victims, and dialogue with authorities to improve access to adequate support for victims, including legal measures, as

well as to prevent violations from occurring. This is at the heart of the ICRC's multidisciplinary approach, as described by ICRC President Peter Maurer in his interview for this issue of the *Review*.

Despite the unprecedented attention dedicated to the problem, sexual violence still remains to a large extent a silent and hidden crime. "You can't imagine what it's like to stand in front of someone and say you've been raped. I thought everyone knew what had happened so I tried to hide," says I. L., one of the persons who has testified anonymously for this issue of the *Review*. Victims may be reluctant to come forward due to the fear of stigmatization or reprisals, but they may also face material barriers when seeking help: geographical distance from adequate medical infrastructure and the impact of conflict on health care, cost of transportation, absence of qualified personnel due to poor security conditions in the area, and so on. Because victims may find it difficult to report their experience, the ICRC has chosen to adopt a proactive approach, assuming that sexual violence occurs in armed conflict unless it can be proved otherwise by an in-depth assessment. This allows the ICRC to be prepared to take remedial actions and to work preventively wherever potential risks are identified and with all armed actors likely to be involved in violence.

At the global level, numerous initiatives have aimed at improving knowledge sharing among actors involved in the response to sexual violence.⁵ The June 2014 Global Summit to End Sexual Violence in Conflict, for instance, gathered around 1,700 delegates and 123 country delegations.⁶ Trainings and guidelines on how to respond to sexual or gender-based violence, and how to better coordinate assistance,⁷ are now available to humanitarian practitioners. Doris Shopper, however, underlines in her contribution the lack of evidence on which to base humanitarian interventions, and reflects on how to improve this evidence base.

The relatively sudden and massive recent attention given to sexual violence in armed conflicts may also have unintended detrimental consequences. Laura Heaton questions the framing of the dominant narrative relating to sexual violence as a "weapon of war"⁸ in the Democratic Republic of the Congo. In her view, and there is a risk that the instrumentalization of such discourse might

5 For protection strategies employed against sexual violence by international and regional peacekeepers, see, for example, UN Women, Stop Rape Now and UN Department of Peacekeeping Operations, "Addressing Conflict-Related Sexual Violence: An Analytical Inventory of Peacekeeping Practice", October 2012 (1st ed. June 2010), available at: www.resdal.org/wps/assets/04dananalyticalinventoryofpeacekeepingpractice.pdf.

6 Building on the Declaration of Commitment to End Sexual Violence in Conflict launched at the UN General Assembly in 2013, the Global Summit to End Sexual Violence in Conflict led *inter alia* to the launch of the International Protocol on the Investigation and Documentation of Sexual Violence in Conflict. See "Global Summit to End Sexual Violence in Conflict", available at: www.gov.uk/government/topical-events/sexual-violence-in-conflict.

7 For references, see Doris Schopper's article in this issue of the *Review*, notes 2–6.

8 In her article for this issue, Gloria Gaggioli explains that while the terms "weapon" and "method of war" are useful in conveying the idea that sexual violence may be used as a strategy rather than just being a by-product of war, these terms should not be understood in a legal or technical sense; she refers instead to sexual violence as an "unlawful policy, tactic or strategy during armed conflict".

obscure the broader picture and draw attention and resources away from key aspects of the problem.

Humanitarian actors also know that their efforts will be futile if States do not bear their primary responsibility in addressing the needs of victims and providing appropriate remedies for them and their families, in full compliance with their own obligations under international law. In this honor, the ICRC is calling on States to honor their obligations under international law – specifically the absolute prohibition of rape and other acts of sexual violence under international humanitarian law (IHL) and international human rights law (IHRL). It is also encouraging States to pursue action based on the pledges they made at the 31st International Conference of the Red Cross and Red Crescent in 2011 to enhance protection for women during armed conflict.⁹ The 32nd International Conference of the Red Cross and Red Crescent at the end of 2015 will aim to ensure that the issue of sexual violence during armed conflict is a highlighted theme to be addressed by States and the Red Cross and Red Crescent Movement.

The legal framework and the importance of regulations and sanctions

The prohibition of rape is one of the oldest and most basic rules of war. Rape was explicitly prohibited and punished by death in the first modern code on the law of war, the Lieber Code of 1863. The 1949 Geneva Conventions and their Additional Protocols also prohibit rape, both explicitly and implicitly through the prohibition of cruel treatment and torture, outrages upon personal dignity, indecent assault and enforced prostitution, in both international and non-international armed conflicts. As recalled by Gloria Gaggioli in this issue, the prohibition is clear and absolute under both IHL and IHRL, which act in complementarity.

The creation of the two *ad hoc* International Criminal Tribunals for the former Yugoslavia and for Rwanda (ICTY and ICTR) allowed the international community to acknowledge that such crimes should be punished, and that individuals can bear criminal responsibility for their commission. It is clear today that sexual violence, when linked to armed conflict, constitutes a war crime. In the *Kunarac* case, the ICTY found that rape can also constitute a crime against humanity in certain circumstances. In the *Akayesu* case, the ICTR found that rape and sexual violence can “constitute genocide in the same way as any other act as long as they [are] committed with the specific intent to destroy, in whole or in part, a particular group, targeted as such”. In the *Čelebići* case, the ICTY ruled for the first time that rape can constitute torture. Building on these important cases, the Rome Statute of the ICC includes “[r]ape, sexual slavery, enforced prostitution, forced pregnancy ... enforced sterilization, or any other

9 The pledges database of the 31st International Conference is available at: www.icrc.org/appweb/p31e.nsf/home.xsp.

form of sexual violence” as war crimes in both international and non-international armed conflicts. While some of the currently pending cases before the ICC include charges related to sexual violence, the Court has yet to secure a conviction for crimes of sexual violence.

The impact of the case law of international courts and tribunals on this issue has been significant, not only for its role in clarifying and developing the law, but also through its deterrent effect. Even if only a few perpetrators have been brought to justice, one must not forget the role justice plays in the symbolic statement of what is right and wrong, in gaining recognition for victims and in demonstrating that there are grave consequences for grave offences.

Ultimately, however, accountability for rape and other forms of sexual violence should be ensured domestically, by investigating these acts and by prosecuting and punishing the perpetrators. Kim Seelinger presents and analyzes national systems for the investigation and prosecution of sexual violence crimes in this issue of the *Review*, based on four case studies in Kenya, Sierra Leone, Liberia and Uganda.

Impunity for sexual violence remains at the heart of the problem in many contexts. While emotional and material barriers may prevent victims from reporting the crime, in some cases the real issue lies in the inability of national justice systems to ensure accountability. What is needed is not development of new law, but better implementation of the existing law. Authorities must ensure that adequate mechanisms are in place allowing victims to report the violence in a safe and confidential manner. Certain measures can ease to the extent possible the difficult process of judicial procedures for victims, such as appropriate sensitization of legal personnel, specific technical arrangements regarding time and place of the hearings (such as the system of “Saturday Courts” in Sierra Leone highlighted by Kim Seelinger), and adequate legal assistance to all alleged perpetrators. The increased attention of the media and public opinion on sexual violence cases should not jeopardize fair trial guarantees by putting pressure on the justice system to secure quick convictions.

To invest in the prevention of sexual violence is to trust in the power of humanity

Much effort has been invested in recent years in improving our understanding of the causes of sexual violence.¹⁰ Research studies in this field identify some of the

¹⁰ To name but a few examples: Elisabeth Jean Wood, “Sexual Violence during War: Toward an Understanding of Variation,” in Ian Shapiro, Stathis Kalyvas and Tarek Masoud (eds), *Order, Conflict, and Violence*, Cambridge University Press, Cambridge, 2008; Maria Eriksson Baaz and Maria Stern, “The Complexity of Violence: A Critical Analysis of Sexual Violence in the Democratic Republic of Congo”, Working Paper on Gender-Based Violence, Nordiska Afrikainstitutet and SIDA, May 2010; Jocelyn Kelly, “Rape in War: Motives of Militia in DRC”, United States Institute of Peace, Special Report 243, June 2010; Dara Kay Cohen, Amelia Hoover Green and Elisabeth Jean Wood, “Wartime Sexual Violence: Misconceptions, Implications, and Ways Forward”, United States Institute of Peace,

main reasons why weapon bearers may *use* sexual violence for strategic purposes: to exert power over territory or resources, for ethnic cleansing, to terrorize or humiliate enemy communities, to obtain information, or as retaliation. But sexual violence by armed organizations need not be ordered to be frequent. In her piece in this issue, Elisabeth Jean Wood refers to sexual violence “as a practice” to describe violence tolerated by commanders – encouraged, for example, by peer pressure. This is to be distinguished from sexual violence occurring opportunistically: not as a strategy or policy, but by taking advantage of the surrounding chaos, or of increased vulnerabilities of victims such as displacement or loss of means of subsistence. This variation in the forms of and reasons for sexual violence precludes any prospect of a “one size fits all” model of prevention.

But how can we translate what we know about the variation of the causes into contextualized prevention policies? Let us offer a few perspectives.

First, any prevention effort requires a solid understanding of the context, conflict dynamics, and the actors engaging in sexual violence. Second, one can expect that much is to be learnt from groups who do not commit sexual violence (in some cases, potentially because they are in search of political legitimacy). Third, the frameworks through which we look at causes of sexual violence could serve to inform prevention activities. So, for instance, if we can identify causes for the perpetration of sexual violence at different levels of an armed organization – at the level of the leadership of the armed organization, at unit level and at individual level – we could craft different prevention strategies adapted to each of these three levels. Prevention dialogue will significantly differ depending on what the attitude of the leadership is vis-à-vis sexual violence (in other words, if acts of sexual violence are encouraged, condoned or prohibited). At the unit level, prevention efforts could focus on better disciplinary mechanisms, and on addressing peer pressure to commit sexual violence, for example. At the individual level, depending on the specific reasons that led an individual to rape in violation of clear orders, prevention dialogue could follow different approaches, ranging from insisting on the prohibitive nature of sexual violence, and on sanctions, to explaining the devastating consequences for the victims and the perpetrators themselves.¹¹

Furthermore, a comprehensive prevention effort cannot fail to take into account the phenomenon of domestic sexual violence being exacerbated during

Special Report 323, February 2013; Ragnhild Nordas, “Preventing Conflict-Related Sexual Violence”, PRIO, Policy Brief, February 2013; “Sexual and Gender-Based Violence in the Kivu Provinces of the Democratic Republic of Congo: Insights from Former Combatants”, Logica and Vivo International, September 2013; Lauren Wolfe, “Why Soldiers Rape – and When They Don’t – in Diagrams”, Women Under Siege Project, 25 July 2014, available at: www.womenundersiegeproject.org/blog/entry/why-soldiers-rapeand-when-they-dontin-diagrams.

- 11 Insisting on the dramatic consequences for the victims can actually be counter-productive when talking to armed organizations that encourage sexual violence as a strategy of war aimed precisely at harming specific communities. However, in cases where sexual violence is a “practice” or is committed opportunistically, raising awareness on the health consequences not only for the victims but also for the perpetrators themselves (e.g. risk of contracting sexually transmitted diseases) may have a deterrent impact.

armed conflict (due to the chaotic environment, proliferation of small arms, climate of impunity and so on). Thus, the battle against sexual violence cannot be fought only by looking at the problem through the prism of armed conflicts. In this respect, it can only be hoped that complementarity between different fields of expertise and action will result in a qualitative improvement in prevention efforts.

It is time to take stock of what research and practice have taught us in the past few decades and engage in a multidisciplinary reflection on how best to transfer this accumulated knowledge into concrete contextualized prevention activities. It is no longer tenable to claim that sexual violence is simply an ugly facet of our worst human inclinations and an unfortunate companion of war; today it is widely acknowledged that sexual violence is *not* an inevitable consequence of armed conflict. This makes prevention efforts critical, legitimate and urgently needed. Sexual violence must and can be stopped. Investing in the prevention of sexual violence is a demonstration of trust in the future of humanity.

Vincent Bernard
Editor-in-Chief

Helen Durham
Director of International Law and Policy, ICRC